

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION FOR TRANSFER OF	)	CASE NO.
OWNERSHIP OF LOVELACEVILLE WATER	)	2009-00164
WORKS TO DWAIN AND DEBRA STIGALL	)	

O R D E R

On April 20, 2009, Dwaine Stigall and Debra Stigall filed an application requesting approval to acquire Lovelaceville Water Company ("Lovelaceville") from Paul McGowan and Barbara McGowan. Lovelaceville provides water service to approximately 67 customers in Ballard County, Kentucky, and its system consists of a main water well, a backup well, approximately 2.5 miles of PVC distribution lines, and meters. Lovelaceville has been owned and operated for years by the McGowans as a sole proprietorship, and the Stigalls similarly intend to operate the utility as a sole proprietorship.

The application for transfer of ownership states that the real estate on which Lovelaceville facilities are located has already been transferred to the Stigalls, and the deed for that transfer has been recorded in the Ballard County Clerk's office. Subsequent to filing the transfer application, the Stigalls filed an application for an adjustment in water rates pursuant to the Commission's regulations applicable to

alternative rate adjustment procedure for small utilities, 807 KAR 5:076. That rate application is still pending before the Commission.<sup>1</sup>

Pursuant to regulations enforced by the Energy and Environment Cabinet, Division of Water ("DOW"), Lovelaceville must have a licensed water plant operator. The transfer application states that, until such time as the Stigalls are able to obtain their own license, arrangements are in place for Mrs. McGowan to continue operating Lovelaceville under the authority of her state-issued license. However, after this transfer application was filed, DOW issued a notice of alleged violations to Lovelaceville due to Mrs. McGowan's license having been terminated approximately three years ago and multiple failures to submit water quality tests as required.

On July 27, 2009, the Stigalls filed a letter stating that they had decided to withdraw their pending application to purchase Lovelaceville because they had not been informed of the alleged violations of DOW regulations. The Stigalls' letter further states that they "are giving all responsibility and duties back to the McGowan's [sic]" and they "will be willing to lease the wells back to [the McGowans] for a monthly fee or will sell it back to them if that is an option."

Based on the evidence of record and being otherwise sufficiently advised, the Commission finds that its jurisdiction to review transfer applications arises from the following two subsections of KRS 278.020:

(5) No person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission by sale of assets, transfer of stock, or otherwise, or abandon the same, without prior approval by the commission.

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<sup>1</sup> Case No. 2009-00180, Alternative Rate Adjustment Filing of Lovelaceville Water Works.

(6) No individual . . . or other entity . . . whether or not organized under the laws of this state, shall acquire control, either directly or indirectly, of any utility furnishing utility service in this state, without having first obtained the approval of the commission. Any acquisition of control without prior authorization shall be void and of no effect.

The pending application for transfer of Lovelaceville falls within the Commission's jurisdiction under both subsections (5) and (6) of KRS 278.020.

The Stigalls' request to withdraw their application to acquire Lovelaceville should be granted. In addition, since the Stigalls have already acquired the property and facilities used by Lovelaceville to provide water service, the Stigalls have acquired control of a utility without the Commission's prior approval. This acquisition of control without prior Commission approval is in violation of KRS 278.020 (5) and (6). Under the express terms of KRS 278.020(6), the purported transfer and sale to the Stigalls of the property and facilities of Lovelaceville is void and of no effect. Thus, ownership and control of Lovelaceville continues to reside with the McGowans.

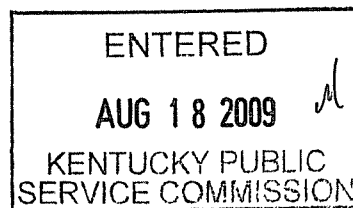
The Commission further finds that the McGowans should take all necessary steps to insure that all of the property and facilities previously operated by Lovelaceville are back under their control and available to provide water service to Lovelaceville's customers.

IT IS HEREBY ORDERED that:

1. The Stigalls' request to withdraw their application for approval to acquire Lovelaceville is granted.
2. The purported transfer to the Stigalls of property and facilities used by Lovelaceville to provide water service is void and of no effect.

3. The McGowans, as owners of Lovelaceville, shall take all necessary steps to ensure that the property and facilities of Lovelaceville are available to provide water customers adequate, efficient, and reasonable service, in conformity with KRS 278.030(2), and adequate and safe service, in conformity with 807 KAR 5:066, Section 7.

By the Commission



ATTEST:

  
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Executive Director

D S Contractors Inc  
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Kevil, KY 42053

Paul S McGowan  
Owner  
Lovelaceville Water Company  
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